Summary of Gerber's *The Logic of Reform: Assessing Initiative Reform Strategies, Chapt. 5*

By Charlotte Ward

Even the most ardent supporters of I&R agree that it needs some reform. As currently practiced it is a far cry from the simple process of direct democracy that it was supposed to be. Ms. Gerber examines some of the perceived problems and their proposed solutions and the empirical evidence that does or does not support them.

The perceived problems may be expressed thus:

1. The process is too heavily influenced by big spending and by "special interests."
2. Voters are not competent to make sound decisions on most of the propositions they are asked to vote on.
3. The propositions are frequently so poorly written that both their intent and the consequences are obscure.
4. Initiatives infringe on minority rights.

Money and Interests

It is undoubtedly true that money plays a role. In a recent year, more money was spent in California on 12 initiatives than on all the state's congressional races. How much does money matter, and how can spending be controlled?

The Supreme Court has ruled that spending limits, allowed in campaigns for office by individuals, would infringe on the right of free speech in I&R elections. Reforms based on spending limits are apparently not an option.

There are three areas of spending in the I&R process: (1) signature collection; (2) campaigning for and against the measure; (3) post election expenses during the appeal process (nearly all propositions that pass come before a court before they take effect, if they ever do).

Ideally, volunteers committed to the cause collect the signatures. Practically, it is almost essential to hire professional signature gatherers, who, since they get paid by the name, usually oversimplify, or may even mislead potential signers. Since it is not possible to forbid their use, one reform idea is to require more qualifying signatures on petitions circulated by professional collectors than on those circulated by volunteers (the "two-tiered system").

Another proposed reform would extend the length of the collection period, expecting that this would favor the use of volunteers.

Other suggestions are to allow internet signing or simply dispense with signatures in favor of a cash payment to get a measure on the ballot.

At the second stage, disclosure of spending and of sponsors on both sides of the campaign seem to be the best avenues of reform.

Reform measures to control post election spending include having a panel of three judges rather than only one to review cases and, when legislative review is used, invoke campaign spending limits.

Educating Voters / Poorly Written Propositions

These two are closely related. Reforms center on trying to insure that accurate, understandable information is provided, usually in a publicly funded brochure that presents both pros and cons of the issue in clear, simple language.

There is considerable evidence that voters are more swayed by who supports or opposes a measure than by arguments setting out the various sides of the issue. Therefore reformers want to make sure that the groups and well-known individuals taking each side are clearly identified. This might mean making known who is paying for ads, both for and against an issue, and making public all campaign activities on both sides.

Public hearings and widespread availability of the information brochures are also proposed as ways of informing voters.

Gerber has found evidence that all of these measures help to achieve a more competent electorate, and that any effort to limit campaign activities is likely to distort the available information one way or another.

A separate concern, that propositions to be voted on are poorly written because they are the product of amateurs insufficiently familiar with constructing laws that will stand up in court, can be handled in several ways. A public agency (judicial or legislative) might look over wording and suggest modification, or the sponsors of a measure might be required to get legal or other expert advice before submitting a proposition. Gerber thinks amending a proposition after it passes is more effective, but since some states do not allow a popularly passed initiative to be amended for three to five years, it would seem preferable to catch as many errors as possible before the vote.

At the heart of many of these concerns is people's distrust of the legislative process as it usually works.

Initiative and Minority Rights

Political thinkers from Madison onward have recognized the potential for the "tyranny of the majority" in any process of direct democracy. An initiative that enacts some measure that is popular with the majority may pass easily, although it introduces difficulties for a significant minority. An example that comes to mind is the establishment of English as the only legal language in a state where many recent arrivals are not yet competent in their new language. When such a measure comes up in a legislative body, there are numerous "veto points" in the enactment process that can delay or mitigate the effect, even if it is eventually passed. Direct democracy does not have these veto points.

Reforms that would protect minority rights include requiring wording that protects the affected minority, public hearings that bring out the possible problems, judicial review to insure minority protection before the petitions are circulated, and legislative action that insures minority rights, whatever measures may be proposed. It is noted that states with I&R also have stronger built-in legislative protections for minority rights.

Post-passage judicial challenges are always possible, but are expensive and time-consuming. It would seem wiser to take minority rights into account from the outset.

CONCLUSION

Gerber points out that, while it is convenient to consider the four problems separately, any reform aimed at one of them will likely affect the rest. Public hearings, disclosure of supporters, financial and otherwise, and clarity and brevity of wording address all the issues, and

are feasible approaches. Attempts to regulate financing seem as likely to be ineffective and to produce negative results in the case of the I&R process as they have been in the case of campaign financing.

Gerber finds little evidence that voters are incompetent to make decisions via the initiative process, and believes that there are adequate legislative and judicial safeguards of minority rights already in place.

Source:

The Logic of Reform: Assessing Initiative Reform Strategies, by Elizabeth R. Gerber. Chapter 5.

Elizabeth R. Gerber is associate professor of political science at the University of California, San Diego. Phd from Un of Michigan in 1991. Research is concerned with the policy consequences of electoral laws and other political institutions. She has written numerous papers on the use of initiatives and referendums in California and other states. Two recent books on the subject, *The Populist Paradox* (1999) and *Stealing the Initiative* (2001), the latter with 3 other authors.